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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,885	07/25/2003	Jun Zhang	11474.0295	3810
26712	7590	02/17/2004	EXAMINER	
HODGSON RUSS LLP ONE M & T PLAZA SUITE 2000 BUFFALO, NY 14203-2391			GREEN, ANTHONY J	
			ART UNIT	PAPER NUMBER
			1755	

DATE MAILED: 02/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/627,885	ZHANG ET AL.
	Examiner	Art Unit
	Anthony J. Green	1755

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-32 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/27/03</u> | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

rewritten to overcome the rejection under 35 U.S.C. 112, second paragraph of the base claims, set forth in this Office action.

Information Disclosure Statement

7. The references have been considered however they are not seen to teach and/or fairly suggest the instant invention.

References Cited By The Examiner

8. The remaining references are cited as showing the general state of the art and as such they are not seen to teach and/or fairly suggest the instant invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony J. Green whose telephone number is 571-272-1367. The examiner can normally be reached on Monday-Thursday 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark L. Bell can be reached on 571-272-1362. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1, 18 and 19 the preamble limitation of "cellulose based products including wood" is confusing as it is unclear as to the materials encompassed by this phrase. Does applicant mean that only cellulose based products that contain wood are encompassed by the phrase, or that wood is an example of the cellulose based product? Clarification is requested.

In claim 1 the phrase "the aqueous wood preservative composition" lacks proper antecedent basis as the preamble of the claim is drawn to "an wood preservative composition".

Claim 5 appears to be outside the scope of claim 1 as claim 1 recites "metal" not a metal compound. That is, claim 1 appears to be merely directed to "metals" not "metal compounds".

In claim 19 the phrase "the aqueous wood preservative composition" lacks proper antecedent basis as lines 3-4 of the claim recite "an aqueous preservative composition".

Claim 23 appears to be outside the scope of claim 19 as claim 19 recites "metal" not a metal compound. That is, claim 19 appears to be merely directed to "metals" not "metal compounds".

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 4-12, 15-17, 19, 22-27 and 29-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heuer et al (US Patent No. 5,874,025).

The reference teaches, in column 18, line 40 - column 19, line 45, a wood preservative concentrate comprising copper compounds, polyaspartic acid or its derivative, a synergistic triazole/fungicide or insecticide mixture, an emulsifier and/or a phosphonium compound and/or tridemorph or aldimorph, an optionally a fungicidal inorganic or organic anion, organic solvents, an aliphatic mono- or dicarboxylic acid and/or cyclocarboxylic acid and/or boric acid or borate, a complexing polymeric nitrogen compound, an and alkanolamine. Column 17, lines 55+ teach that the composition may also contain an organochemical binder such as an acrylate resin, a vinyl resin etc.

The instant claims are met by the reference. While the reference does not specifically recite an example which teaches the instantly claimed composition it does provide the motivation for one of ordinary skill in the art to produce the claimed

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composition as the reference teaches various components that may be present in the composition, many of which are the same as instantly claimed. Note column 18, lines 40+ which teaches the use of all of the instantly claimed components except for the vinyl polymer. The reference does teach, however in column 17, lines 55+, that vinyl resins may be added to the composition if desired. While the specific vinyl polymers recited in the instant claims are not recited, it does broadly teach the use of vinyl resins, therefore it would have been obvious to one of ordinary skill in the art to substitute any well known vinyl polymer for the vinyl resins of the reference absent evidence showing otherwise. As for the amounts, they are encompassed by the ranges recited in the reference. With respect to the molecular weight of the polyethyleneimine compound, lines 27-34 of column 14, teach that the degree of polymerization of the polyethyleneimine is from 50-1000, therefore the molecular weight of the polyethyleneimine of the reference encompasses that which is instantly claimed. Accordingly based on the above reasoning, the instant claims are rendered obvious by the reference absent evidence to the contrary.

Allowable Subject Matter

5. Claim 18 would be allowable if rewritten to overcome the rejection under 35 U.S.C. 112, second paragraph, set forth in this Office action.

6. Claims 2-3, 13-14, 20-21 and 28 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and if

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Anthony J. Green
Primary Examiner
Art Unit 1755

ajg
February 06, 2004